



In his blog, Commission Member Professor Kwame Akuffo reflects on the tensions highlighted by a legal system that favours the rights of the individual over family structure in our multi-cultural society.

Families and households in England today are infinitely diverse in their provenance and forms, and their modern manifestations appear to be very different from their expressions in earlier generations. The increasing numbers of multicultural families and households and the rich variety of ethnicities have had a profound effect on English society and the functioning of key institutions such as the legal system, and cultural and religious practice, which merit the Commission's attention in the coming months.

According to Article 16 (3) of the Universal Declaration of Human Rights 1948, the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Despite this, it's not entirely clear in social and legal practice how the family is defined, what its purpose is and whether the State fulfils its obligation to protect it. So significant are socio-economic inequalities in England today, that any attempt to promote the protection and wellbeing of families and households cannot succeed without dealing with the issues of poverty and inequality in their various presentations. The Commission will need to explore and understand the appropriate resources needed by all families and households for them to flourish.

A close examination of the treatment of families and households by the state, and by the courts specifically, suggests that practice in the family courts creates tensions between protecting the integrity of family life and upholding the rights of the individual. The focus in law and the courts on the individual within the family justifies a view that the concept of family is largely individualised in our legal system. In private family law practice, for example, these tensions are evident when marriages or other relationships where there are children come to an end. The best interests of the child are still paramount, but this is not always straightforward to determine in situations where each parent is keen to have primary responsibility for the child's day-to-day care and cannot agree on the arrangements for the children. Balancing what is best for a child with competing parental demands presents a challenge which may not always result in an outcome that encourages consensus or harmony within the family. It has often been said that family court judges need the wisdom of Solomon if they are to protect a child's best interests and encourage harmonious family arrangements after divorce.

Section 8 of the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights (ECHR), provide for the right to family life. However, the case law, especially with regards to Article 8 of the ECHR, shows clearly that the provision does not really aim to promote the family as an entity but rather it focuses on the rights of individuals. For example, tensions appear in immigration cases when a person is arguing against deportation because of the family life that is possible in the UK. The focus in law is on the individual's status rather than on his or her family. In these situations, where the applicant is wanting to prevent deportation from the United Kingdom, the law does not necessarily take account of family structure or seek to protect the unity of a family living in this country.

The focus on individuals within family groups reflects entrenched Western legal traditions in which legal and human rights vest in the individual in the first instance, so that the family as a unit has never been the focus of legal protection. This approach obviously has its merits as far as the

individual is concerned but stands in sharp contrast with other cultures where, for example, a marriage is treated as a union of families rather than as a contract between individuals. There is a sense in our culture in which the individualisation of the family subverts the very notion of the family and its strengths.

My hope is that over the course of our work as a Commission we will uncover the major factors that encourage the flourishing of families and households, as well as the factors that impede their development, looking carefully at our legal system and at the inequalities in our society. Our effectiveness will ultimately be judged by the impact of our work on the lives of real people with lived experiences.

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